IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.993 OF 2005

Dhanyakumar Udhav Gulve .. .. Appellant
Versus
Sambhaji Udhav Gulve and Anr. .. Respondents

Mr.S.S.More for appellant
Mr.R.V.More for respondent Nos.1 and 3

CORAM : P.V.KAKADE, J.

DATE : 20TH SEPTEMBER, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Pandharpur dated 4.9.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Malshiras dated 10.12.1984 decreeing the plaintiff's suit for partition and held that the plaintiff and the defendants having 1/5th share in the suit properties and also in the gold of weighing 185 gms. the Loan amount in the State Bank of India at Akluj, which has to pay by the plaintiff and defendants in their proportionate share, so also they are entitled

to the amounts deposited in the name of defendant no.1 in the Yeshwant Sahakari Sakhar Karkhana of Rs.20,889.26 ps. and also the shares in the name of defendant no.1 to the extent of 1/5th each. It was also held that the plaintiff and defendants were also having 1/5th share in the Motor Cycle. It was further directed that the defendant no.2 was required to pay Court Fee of Rs.9,948/= of his share before the partitions were effected.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff has filed the suit for partition and immovable and movable properties belonging to the parties. The Defendants contested the suit on ground that certain items of the property held jointly were not shown in the plaint and was not brought in hotch-potch and also challenged the valuation of the suit property etc. and sought dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the defendant no.2 failed to prove that the valuation of the

properties mentioned in written statement was not correct. It was also held that he failed to prove that the properties mentioned in written statement at item nos.6, 7 and 8 were available for partition.Further it was held that the plaintiff was entitled to the partition of the available properties, which were categorically mentioned and was further held that the parties had 1/5th share therein and suit came to be decreed. The appeal was carried to the District Court, who after hearing both the sides upheld the findings recorded by the trial court and dismissed the appeal. Hence the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The only question which is sought to be urged on behalf of the appellant is to the effect that whether the courts below were justified in ordering the partition of the properties as per the Record of Rights and the 7/12 extract, the properties had already been partitioned and the name of each family members are shown on the 7/12 extract by the Tahsildar by way of Anewari. This was the issue sought to be raised. However, needless to mention that this cannot be

question of law, leave aside the substantial question of law. Moreover, mere entry in Anewari record would not be sufficient to jump to the conclusion that there were earlier partitions were effected between the parties and therefore, such property was not available for partition. In other words, both the courts below have recorded concurrent findings to the effect that the said properties, which were available for partitions, are listed and plaintiff and defendants having 1/5th share therein. I see no reason to disturb the findings recorded by both the courts below and I hold that the appeal has no merits and stands dismissed without any order regarding costs.